APPENDIX A

INSTRUCTION NO. SEVEN

If you find for the plaintiffs Fulkerson and Herrensmith against the Ford Motor Company under Instruction One, and if you are further satisfied from the evidence that the accident was caused by gross negligence on the part of Ford Motor Company, you may in your discretion award punitive damages against Ford Motor Company in addition to the damages otherwise authorized under these instructions in an amount at the discretion of the jury. If you award punitive damages, you will state the amount separately from the sum or sums awarded under any other instruction, and you may use Verdict Form G for this purpose.

"Gross Negligence" means a wanton or reckless disregard for the lives and safety of other persons, including the plaintiffs, or a wilful or malicious act.

/s/ Edwin A. Schroering, Jr.
EDWIN A. SCHROERING, JR.
Judge

Date: 1-27-93

VERDICT FORM B

After considering the evidence the jury answers interrogatory under verdict form B, as follows:

Do you believe from the evidence that Troy Cilone failed to perform any of his duties, required of him under Instruction No. Two, and such failure was a substantial factor in causing the accident.

___ YES ___X NO

/s/ [Illegible]
Foreperson (If Unanimous)

VERDICT FORM D

We, the jury, find for the plaintiffs and against the defendant Ford Motor Company under Instruction No. Four and award damages as follows:

I. For Melinda Herrensmith, Individually and as Mother and Administratrix of the Estate of Troy E. Cilone:

(a) Funeral Expenses (Not to exceed $8951.50) $ 8,951.50

(b) Damage to the Estate resulting from the destruction of Troy Cilone's power to labor and earn money. (Not to exceed $2 Million). $ 790,800

(c) Fair and reasonable compensation to Melinda Herrensmith for her loss of affection and companionship of Troy Cilone from the date of death until he would have been 18 years of age. (Not to exceed $500,000.00). $ 250,000

/s/ [Illegible]
Foreperson (If Unanimous)

VERDICT FORM E

We, the jury, find for hte Plaintiffs and against the Ford Motor Company under Instruction No. Five and award damages as follows:

I. For William Franklin Fulkerson.

(a) Mental and physical pain and suffering including that which he is reasonably certain to endure in the future. (Not to exceed 1,000,000)	$ 750,000
(b) Lost wages and permanent impairment as his power to labor and earn money. (Not to exceed 180,006).	$ 155,000
(c) Reasonable expenses incurred for hospital and medical services, medicine and medical supplies. (Not to exceed 74,274).	$ 74,247
(d) Future and reasonably probable medical expenses. (Not to exceed 70,000).	$ 70,000
Total Award. (Not to exceed 1,324,280).	$1,049,274

/s/ [Illegible]
Foreperson (If Unanimous)

VERDICT FORM F

We, the jury, find for the plaintiff, Pauline Fulkerson against the defendant, Ford Motor Company under Instruction No. Six and award damages as follows:

I. For Pauline Fulkerson

(a) For loss of the consortium, society, companionship, conjugal affection, fellowship and assistance of William Franklin Fulkerson, her husband. (Not to exceed $500,000.00) $250,000.00

/s/ [Illegible]

Foreperson (If Unanimous)

VERDICT FORM G

We, the jury, having found for the plaintiffs under Instruction No. Seven against Ford Motor Company, and being satisfied from the evidence that the accident was caused by gross negligence on the part of Ford Motor Company, award punitive damages to the plaintiffs against Ford Motor Company as follows:

For Melinda Herrensmith, Administratrix of the Estate of Troy E. Cilone. (Not to exceed $2,000.000.00)	$2,000,000.00
For William Franklin Fulkerson. (Not to exceed $2,000,000.00)	$2,000,000.00

John Cadden
Gary Alvey
Mark Abromavage
Donna Lynch
Regina Summers
Carol Williams
Kathryn L. White
Tammy A. Murphy
Woodward German"

APPENDIX B

411.184. Definitions—Punitive damages—Proof of punitive damages.—(1) As used in this section and KRS 411.186, unless the context requires otherwise:

(a) "Oppression" means conduct which is specifically intended by the defendant to subject the plaintiff to cruel and unjust hardship.

(b) "Fraud" means an intentional misrepresentation, deceit, or concealment of material fact known to the defendant and made with the intention of causing injury to the plaintiff.

(c) "Malice" means either conduct which is specifically intended by the defendant to cause tangible or intangible injury to the plaintiff or conduct that is carried out by the defendant both with a flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in human death or bodily harm.

(d) "Plaintiff" means any party claiming punitive damages.

(e) "Defendant" means any party against whom punitive damages are sought.

(f) "Punitive damages" includes exemplary damages and means damages, other than compensatory and nominal damages, awarded against a person to punish and to discourage him and others from similar conduct in the future.

(2) A plaintiff shall recover punitive damages only upon proving, by clear and convincing evidence, that the defendant from whom such damages are sought acted toward the plaintiff with oppression, fraud or malice.

(3) In no case shall punitive damages be assessed against a principal or employer for the act of an agent or employee unless such principal or employer author-

ized or ratified or should have anticipated the conduct in question.

(4) In no case shall punitive damages be awarded for breach of contract.

(5) This statute is applicable to all cases in which punitive damages are sought and supersedes any and all existing statutory or judicial law insofar as such law is inconsistent with the provisions of this statute. (Enact. Acts 1988, ch. 224, § 2, effective July 15, 1988.)

APPENDIX C

411.186. Assessment of punitive damages.—(1) In any civil action where claims for punitive damages are included, the jury or judge if jury trial has been waived, shall determine concurrently with all other issues presented, whether punitive damages may be assessed.

(2) If the trier of fact determines that punitive damages should be awarded, the trier of fact shall then assess the sum of punitive damages. In determining the amount of punitive damages to be assessed, the trier of fact should consider the following factors:

(a) The likelihood at the relevant time that serious harm would arise from the defendant's misconduct;

(b) The degree of the defendant's awareness of that likelihood;

(c) The profitability of the misconduct to the defendant;

(d) The duration of the misconduct and any concealment of it by the defendant; and

(e) Any actions by the defendant to remedy the misconduct once it became known to the defendant.

(3) KRS 411.184 and this section are applicable to all cases in which punitive damages are sought. (Enact. Acts 1988, ch. 224, § 3, effective July 15, 1988.)

APPENDIX D

EXCERPTS FROM UNOFFICIAL TRIAL TRANSCRIPT

January 22, 1993, Tape No. 13; 10:11:52

MR. GRUBBS: The damages instructions describe the amount of money that is claimed. And I say claimed because I have heard in the past jurors sometimes look at the dollar figures that are put in the instructions and thought, well maybe that it's somehow recommended by the court. It is not, it is a figure that the attorneys pick, the attorneys for the Plaintiffs, and this is the amount that they claim. It is what they—the highest they would hope they could ever recover. * * *

* * * *

Instruction number seven is a punitive damages instruction. And punitive damages are given in cases by civil juries as a form of punishment where there has been outrageous conduct. Where there has been just such a complete reckless disregard for the life, for the lives of people, that there ought to be a civil punishment imposed in addition to compensatory damages. Compensatory damages are simply damages which are fixed by the jury to make the person whole for the losses that they have sustained. Punitive damages are on top of that. They are only given in the discretion of the jury where it can conclude not to give them for any reason. In this particular case, I think the jury should realize that in light of the testimony and in light of the experience, there is simply no way that the conduct of Ford Motor Company could ever be considered outrageous, reckless, wanton, malicious, those types of things. You'll never reach this instruction, you'll never need to reach this instruction, if you find for the Defendant, Ford Motor Company under instruction number one. You'll conclude that the wheel came off before hand, you should never reach the question of punitive damages. * * *

* * * *

Now, the other thing that I would point out to you about damages is that as we discussed very early in this case during voir dire examination. Damages must be fair and reasonable. That means that they must be fair to both sides and they must not be given as a result of compassion or prejudice or out of sympathy and you as jurors in this case indicated to us that you could put aside sympathy. Sympathy to mean all people, Mr. & Mrs. Fulkerson and Mrs. Herrensmith for their losses and decide this case fairly and objectively on the evidence and not on sympathy. Often times a lawyer will say, well I don't want sympathy, I want justice, but launch into a very emotional argument which is just a design to create sympathy in the minds of the jury. I am confident that you will be true to your own in this case and return a verdict that is not based on sympathy but on facts and the law. * * *

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January 22, 1993, Tape No. 13; 11:48:00

MR. MILLER: But where you folks can make your voices heard in this case is in the final instruction here which deals with punitive damages. Mr. Grubbs is right, that's punishment. It truly is a punishment. The conduct afforded in this case fully justifies such an award. Gross negligence damages, what could be more gross. Knowing that you have a hazard; knowing that you killed somebody; knowing that you could cause serious injury to somebody, to someone like Frank; and not bothering to warn people you know are out there driving these vehicles, warning anybody of risk. And they knew, the tragic thing is that they knew they had a safe design. Safe proven design, back in 1973 where Bihlmeyer told you, knew that. And they abandoned that. Why does any company do that thing? For money that it saves the company. The duty and care as you heard the witnesses testify, of a manufacturer is if you know of a defect, a manufacturer is supposed to fix it. Period. At a very

minimum, if you can't fix the thing is to warn people that you got a problem. Whatever risk there was, it certainly hit Troy on June 2, 1985. Everything that Troy was, his hopes, his aspirations, his dreams, everything he wanted to be. There's the story just like that. Look what happened to Frank. You folks are the conscience of this community. You folks set the standards of conduct for little folks like me and Melinda, but you also set the standards of conduct for big companies.

MR. GRUBBS: (Interrupting) Your honor, I object to that. That's improper! I ask the court to admonish counsel.

THE COURT: The jury will follow the instructions of the court. . . . Everybody comes before the law on equal basis.

MR. MILLER: You honor is absolutely right. You folks are the conscious of this community and you folks are to set the standard in what you consider reasonable conduct for all of the parties involved here. You can make your voices heard by your verdict that you render in this case. Ford has done wrong in this case the evidence is convincing, conclusive and that's the case. You should tell it by the verdict that they should never, never do that it again. * * *

* * * *

January 22, 1993, Tape No. 13; 12:56:58

MR. SALES: We have asked for punitive damages in this case and we have set two million dollars for the punitive damages. My belief in this is that you should do what you think is appropriate to make sure that this does not happen again. Whether it is a hundred dollars, a hundred thousand, five hundred thousand, a million, it doesn't make any difference. Because to recall this vehicle, over 2 million vehicles, it would cost Ford Motor millions and millions and millions of dollars. But maybe

what you do here, whatever amount you put on punitive damages will send a signal around. Because the purpose of punitive damages is not to reward Frank, or not to reward Ms. Herrensmith for the loss of her son, but it is to hold the wrongdoer up to society and to others who may do the same thing agan. Don't do it. Don't do it. This is a warning, don't. And if you do, you'll pay for it. That's the purpose of punitive damages. It is a social reason. It is to say, we cannot tolerate these things in our society. Don't let it happen again. So whatever you do does nothing more than send out this signal, if it does nothing more than stop that next person from dying, or the next man like Frank Fulkerson from being crippled in his life, then you do what you think is appropriate because that's what's important. It's got to stop today. A warning must be sent. We must find and seek the truth. * * *

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